

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0556 ST

Sales/Use Tax

For The Tax Periods: 1994, 1995, 1996

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ISSUE

Sales/Use Tax – Telecommunications Services

Authority: IC 6-2.5-4-6, IC 6-2.5-4-10

Taxpayer protests the proposed assessment of sales tax on the total gross receipts of its radio telecommunications business.

STATEMENT OF FACTS

Taxpayer sells, rents and services two-way radios. The taxpayer installs internal communications for its customers. Taxpayer's customers include farmers, contractors, hospitals, power utilities, transportation companies, ambulance, companies, municipalities, and schools.

Some of the taxpayer's customers require additional power for wider transmission of communications than the radios can provide solely on their own battery power range. A typical radio range is less than two miles. The taxpayer provides radio signal towers (repeaters) which relay the customers signal to wider range (30 miles or more). The operation of these repeaters is regulated by the Federal Communications Commission which permits the taxpayer to resell their authorized frequencies to customers whom in turn are required to obtain FCC licenses themselves. The issuance of the proposed assessment is the charge for "air-time" via the repeater.

Taxpayer was audited in 1993. The audit did not assess a sales tax on the air time charges. Taxpayer relied upon this fact to continue its business as usual and not impose a sales tax on the air time charges during the subsequent audit years. The sales tax code was amended in 1993 to impose a tax on telecommunications services.

DISCUSSION

Effective July 1, 1993, IC 6-2.5-4-6(a), provides that telecommunications services are subject to gross retail tax. The statute defines telecommunication service as:

[T]he transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

IC 6-2.5-4-6 further states that a person is a retail merchant making a retail transaction when the person (1) furnishes or sells an intrastate telecommunication service; and (2) receives gross retail income from billings or statements rendered to customers. A person is not a retail merchant making a retail transaction when the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a).

Taxpayer has no argument that it is engaged in a transaction subject to this code provision but rather argues the basis for the sales tax. Taxpayer argues that it is not selling "air time" as assessed in the audit report. Taxpayer rents "hand held" mobile units to its customers that facilitate the radio telecommunications service that is provided. Taxpayer's customers may order as many of these units as are needed for the operation of their business. However, at any given time, only one unit may talk/receive to or from another unit. When these two units are in communications with one another, all other units are blocked out of the system; an inherent characteristic of the radio. Taxpayer contends that because only two units may be on the "air" at the same time, the monthly fee is not per se air time.

Furthermore, taxpayer argues that it is not a retail merchant making a retail transaction with respect to their furnishing of "hand held" mobile units used in furnishing a telecommunication service. Citing IC 6-2.5-4-6(c), taxpayer argues that these units are tangible personal property provided and used in connection with the furnishing of telecommunications services; thus, the monthly charges for the units should not be subject to tax. Taxpayer's invoices indicate that the mobile units are rented at a monthly charge per unit. IC 6-2.5-4-10 states in pertinent part that a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. Taxpayer's rental of the "hand held" mobile units is the rental of tangible personal property and subject to gross retail tax. The mobile units are not "provided" as required by the state. Rather, the units are rented separate from the charges for the telecommunication service.

FINDING

Taxpayer's protest is denied.